

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of)	
)	
)	
Devron Jones, Shikina Jones and their five)	
minor children,)	
)	
Charging Party,)	HUDALJ No.
)	FHEO No. 04-07-0030-8
v.)	
)	
)	
Theresa O. Mercker,)	
)	
)	
Respondent.)	
)	
)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On September 11, 2006, Devron Jones and Shikina Jones filed a verified complaint with the United States Department of Housing and Urban Development (“the Department” or “HUD”), alleging that Respondent Theresa O. Mercker discriminated against them because of race in violation of, *inter alia*, subsection 804(b) of the Fair Housing Act (“Act”). On January 30, 2007, and October 25, 2007, the complaint was amended to include Devron Jones and Shikina Jones’ five minor children; to add familial status as an additional basis for the alleged discrimination; and to allege violations of subsection 804(a) and section 818 of the Act.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of an aggrieved person following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing

practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary of HUD has delegated to the General Counsel (24 C.F.R. § 103.400(a)(2)(i) and § 103.405), who has redelegated to the Assistant General Counsel for Fair Housing Enforcement (74 Fed. Reg. 62803, 62804 (Dec. 1, 2009)), the authority to issue a Charge.

The Regional Director of the Office of Fair Housing and Equal Opportunity (FHEO) for Region IV, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that discriminatory housing practices have occurred in this case because of familial status and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned HUD Complaint and the Mixed Determination of Reasonable Cause and No Reasonable Cause, Respondent Theresa O. Mercker is charged with discrimination because of familial status as follows:

- 1) It is unlawful to refuse to rent after the making of a bona fide offer, or otherwise make unavailable or deny, a dwelling to any person because of familial status. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.50(b)(1), (3).
- 2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of rental of a dwelling because of familial status. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.50(b)(2).
- 3) It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, any right granted or protected by section 804 of the Act. 42 U.S.C. § 3617; 24 C.F.R. § 100.400.
- 4) Complainants Devron Jones and Shikina Jones are the parents of five minor children who, at all times relevant, lived with Complainants.
- 5) Respondent, at all times relevant, resided in Owensboro, KY, was the sole owner of the subject property located at 2710 Angela Circle, Gulfport, MS 39503, and, in addition to the subject property, owned and managed nine properties in Owensboro, KY.
- 6) The subject property is a single-family, one story home with three bedrooms, a living room, a dining room, a den/family room, a kitchen, one full bath, one-half bath, and a laundry room, and contains a total of 1400 square feet of floor space.
- 7) At all times relevant, Don Pizzetta, owner of D&D Enterprises, was the property manager for the subject property pursuant to a management agreement with Respondent executed on July 15, 2005. The agreement provided that Pizzetta

- would assume responsibility for renting the subject property, including executing all lease agreements.
- 8) Complainants, who had been renting a two-bedroom apartment from Pizzetta, asked him about the availability of a larger home that would better accommodate their family. On or about May 2006, Pizzetta showed complainants the subject property. After viewing the subject property, Complainants told Pizzetta that they would like to rent it.
 - 9) On or about May 25, 2006, Complainants executed a one-year lease agreement for the subject property and paid a \$250.00 security deposit and \$900.00 for the first month's rent.
 - 10) On or about May 29, 2006, Complainants began moving into the subject property. Later that same day, Respondent and a friend of hers arrived unannounced to inspect repairs previously made to the house. Respondent toured the subject property and observed Complainants unpacking their belongings.
 - 11) On or about May 29, 2006, after leaving the subject property, Respondent telephoned Pizzetta and told him "to get those people out because they [are] gonna tear up my house."
 - 12) On or about May 30, 2006, Pizzetta informed Complainants that Respondent wanted them out because she claimed they "were gonna tear up her house." During FHEO's investigation, Respondent stated that she evicted the Complainants because the subject property "is too small for 7 people."
 - 13) On or about June 1, 2006, Complainants and their minor children vacated the subject property and, with Pizzetta's consent, moved back into the two-bedroom apartment they formerly occupied.
 - 14) Upon learning she and her family could not live in the subject property, Complainant Shikina Jones experienced considerable stress and was unable to eat or sleep. Complainants Devron Jones and Shikina Jones stated that their children questioned them as to why they had to move out after they had just moved in. They preferred the larger subject property and its amenities over their smaller two bedroom apartment.
 - 15) Respondent's prohibition of seven people from living at the subject property had a disparate impact on families with children because nearly all households in the area with seven persons include children.
 - 16) The occupancy code in effect for Gulfport, MS at all times relevant, i.e., the 1994 Standard Housing Code, requires only 150 square feet of habitable floor space for the first occupant and at least an additional 100 square feet of habitable floor area for every additional occupant, totaling 750 square feet for seven occupants, well

below the subject property's 1231 square feet of habitable floor space. The same code requires that every room occupied for sleeping purposes by more than one person must contain at least 50 square feet of floor space for each occupant thereof, which would also have been satisfied in this case by Complainants' proposal to have their children sleep in two of the bedrooms and in the den/family room.

- 17) By terminating Complainants' lease, Respondent made housing unavailable to them because of familial status in violation of 42 U.S.C. § 3604(a); 24 C.F.R. § 100.50(b)(1), (3).
- 18) By terminating Complainants' lease, Respondent discriminated against them in the terms and conditions of their tenancy because of familial status in violation of 42 U.S.C. § 3604(b); 24 C.F.R. § 100.50(b)(2).
- 19) By terminating Complainants' lease, Respondent coerced, intimidated, threatened, or interfered with them in the exercise or enjoyment of, or on account of their having exercised or enjoyed, rights granted or protected under section 804 of the Act, in violation of 42 U.S.C. § 3617; 24 C.F.R. § 100.400.
- 20) As a result of Respondent's discriminatory conduct, Complainants and their minor children suffered damages, including a lost housing opportunity, economic loss, inconvenience, and emotional distress.

III. **CONCLUSION**

WHEREFORE, the Secretary of the U.S. Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A) of the Act, hereby charges Respondent Theresa O. Mercker with engaging in discriminatory housing practices in violation of subsections 804(a) and (b) and section 818 of the Act, and prays that an Order be issued that:

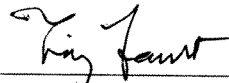
- 1) Declares that the discriminatory housing practices of Respondent, as set forth above, violate the Act, and its implementing regulations;
- 2) Enjoins Respondent, her agents, her employees and successors, and all other persons in active concert or participating with her from discriminating because of familial status in violation of the Act against any person in any aspect of the rental of a dwelling;
- 3) Awards such damages as will fully compensate Complainants, including but not limited to, emotional distress damages and financial costs associated with Respondent's discriminatory conduct in violation of 42 U.S.C. §§ 3604(a), (b), and 3617;

- 4) Assesses a civil penalty of \$16,000 against Respondent for each violation of the Act that Respondent has committed pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671(a); and
- 5) Provides any such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

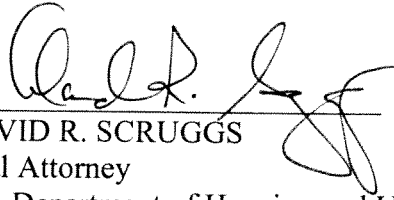
Respectfully submitted,



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